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HOWARD
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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

HOWARD RICE NEMEROVSKI CANADY
 FALK & RABKIN, a California professional
 corporation,

Plaintiff,

v.

TOTAL TECHNOLOGY, INC., an Ohio
 corporation; and DOES 1 through 40,
 inclusive,

Defendants.

AND RELATED COUNTERCLAIMS.

No. C 06 00426 CW

Action Filed: December 22, 2005
 Action Removed: January 23, 2006

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 **Party:** any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 **Disclosure or Discovery Material:** all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3 **“Confidential” Information or Items:** information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under F.R.Civ.P. 26(c).

2.4 **Receiving Party:** a Party that receives Disclosure or Discovery Material from a Producing Party.

2.5 **Producing Party:** a Party or non-party that produces Disclosure or Discovery Material in this action.

1 2.6 **Designating Party:** a Party or non-party that designates information or
2 items that it produces in disclosures or in responses to discovery as “Confidential”.

3 2.7 **Protected Material:** any Disclosure or Discovery Material that is
4 designated as “Confidential”.

5 2.8 **Counsel:** Outside counsel and counsel who are employees of a Party, as
6 well as their support staffs.

7 2.9 **Professional Vendors:** persons or entities that provide litigation support
8 services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or demonstrations;
9 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
10 subcontractors.

11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only Protected
13 Material (as defined above), but also any information copied or extracted therefrom, as well
14 as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
15 presentations by parties or counsel to or in court or in other settings that might reveal
16 Protected Material.

17 4. DURATION

18 Even after the termination of this litigation, the confidentiality obligations imposed by
19 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a
20 court order otherwise directs.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 **Exercise of Restraint and Care in Designating Material for Protection.**

23 Each Party or non-party that designates information or items for protection under this Order
24 must take care to limit any such designation to specific material that qualifies under the
25 appropriate standards. A Designating Party must take care to designate for protection only
26 those parts of material, documents, items, or oral or written communications that qualify—
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1 so that other portions of the material, documents, items, or communications for which
2 protection is not warranted are not swept unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified, or that have been made for an improper purpose (*e.g.*, to
5 unnecessarily encumber or retard the case development process, or to impose unnecessary
6 expenses and burdens on other parties), expose the Designating Party to sanctions.

7 If it comes to a Party's or a non-party's attention that information or items that it
8 designated for protection do not qualify for protection at all, or do not qualify for the level of
9 protection initially asserted, that Party or non-party must promptly notify all other parties
10 that it is withdrawing the mistaken designation.

11 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
12 this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated or
13 ordered, material that qualifies for protection under this Order must be clearly so designated
14 before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) **For information in documentary form** (apart from transcripts of
17 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
18 "CONFIDENTIAL" at the top of each page that contains protected material. If only a
19 portion or portions of the material on a page qualifies for protection, the Producing Party
20 also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in
21 the margins).

22 A Party or non-party that makes original documents or materials available for
23 inspection need not designate them for protection until after the inspecting Party has
24 indicated which material it would like copied and produced. After the inspecting Party has
25 identified the documents it wants copied and produced, the Producing Party must determine
26 which documents, or portions thereof, qualify for protection under this Order, then, before
27 producing the specified documents, the Producing Party must affix the legend
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1 “CONFIDENTIAL” at the top of each page that contains Protected Material. If only a
2 portion or portions of the material on a page qualifies for protection, the Producing Party
3 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in
4 the margins).

5 (b) **for testimony given in deposition or in other pretrial or trial**
6 **proceedings**, that the Party or non-party offering or sponsoring the testimony identify on the
7 record, before the close of the deposition, hearing, or other proceeding, all protected
8 testimony. When it is impractical to identify separately each portion of testimony that is
9 entitled to protection, and when it appears that substantial portions of the testimony may
10 qualify for protection, the Party or non-party that sponsors, offers, or gives the testimony
11 may invoke on the record (before the deposition or proceeding is concluded) a right to have
12 up to 20 days following receipt of the transcript to identify the specific portions of the
13 testimony as to which protection is sought.

14 During deposition or other testimony regarding Protected Material, the Designating
15 Party may exclude any persons not entitled to disclosure of such material. Transcript pages
16 containing Protected Material must be separately bound by the court reporter, who must
17 affix to the top of each such page the legend “CONFIDENTIAL” as instructed by the Party
18 or nonparty offering or sponsoring the witness or presenting the testimony.

19 (c) **for information produced in some form other than documentary,**
20 **and for any other tangible items**, that the Producing Party affix in a prominent place on the
21 exterior of the container or containers in which the information or item is stored the legend
22 “CONFIDENTIAL”. If only portions of the information or item warrant protection, the
23 Producing Party, to the extent practicable, shall identify the protected portions.

24 5.3 **Inadvertent Failures to Designate.** If timely corrected, an inadvertent
25 failure to designate qualified information or items as “Confidential” does not, standing
26 alone, waive the Designating Party’s right to secure protection under this Order for such
27 material. If material is appropriately designated as “Confidential” after the material was
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1 initially produced, the Receiving Party, on timely notification of the designation, must make
2 reasonable efforts to assure that the material is treated in accordance with the provisions of
3 this Order. A Receiving Party shall not be held in breach of this Stipulation and Order with
4 respect to specific disclosures of Protected Material made prior to a belated designation of
5 such material by the Producing Party. Once such belated designation has been made,
6 however, that material shall be treated by the Receiving Party appropriately for the
7 designation in accordance with this Stipulation and Order.

8 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 **6.1 Timing of Challenges.** Unless a prompt challenge to a Designating
10 Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness,
11 unnecessary economic burdens, or a later significant disruption or delay of the litigation, a
12 Party does not waive its right to challenge a confidentiality designation by electing not to
13 mount a challenge promptly after the original designation is disclosed. No Receiving Party
14 shall be deemed by treating information as Protected Material to have conceded that the
15 information actually is confidential.

16 **6.2 Meet and Confer.** A Party that elects to initiate a challenge to a
17 Designating Party's confidentiality designation must do so in good faith and must begin the
18 process by conferring directly with Counsel for the Designating Party. Counsel for the
19 Designating Party shall respond promptly and cooperate fully in the conferral process. In
20 conferring, the challenging Party must explain the basis for its belief that the confidentiality
21 designation was not proper and must give the Designating Party an opportunity to review the
22 designated material, to reconsider the circumstances, and, if no change in designation is
23 offered, to explain the basis for the chosen designation. A challenging Party may proceed to
24 the next stage of the challenge process only if it has engaged in this meet and confer process
25 first.

26 **6.3 Judicial Intervention.** A Party that elects to press a challenge to a
27 confidentiality designation after considering the justification offered by the Designating
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1 Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil
 2 Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail
 3 the basis for the challenge. Each such motion must be accompanied by a competent
 4 declaration that affirms that the movant has complied with the meet and confer requirements
 5 imposed in the preceding paragraph and that sets forth with specificity the justification for
 6 the confidentiality designation that was given by the Designating Party in the meet and
 7 confer dialogue.

8 The burden of persuasion in any such challenge proceeding shall be on the Designating
 9 Party. Until the court rules on the challenge, all parties shall continue to afford the material
 10 in question the level of protection to which it is entitled under the Producing Party's
 11 designation.

12 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

13 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is
 14 disclosed or produced by another Party or by a non-party in connection with this case only
 15 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material
 16 may be disclosed only to the categories of persons and under the conditions described in this
 17 Order. When the litigation has been terminated, a Receiving Party must comply with the
 18 provisions of section 11, below (FINAL DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a location
 20 and in a secure manner that ensures that access is limited to the persons authorized under this
 21 Order.

22 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless
 23 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
 24 Party may disclose any information or item designated "CONFIDENTIAL" only to:

25 (a) the Receiving Party's counsel of record in this action, as well as
 26 employees of said counsel to whom it is reasonably necessary to disclose the information for
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1 this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is
2 attached hereto as Exhibit A;

3 (b) the current and former officers, directors, and employees of the
4 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
5 signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

6 (c) experts of the Receiving Party to whom disclosure is reasonably
7 necessary for this litigation and who have signed the “Agreement to Be Bound by Protective
8 Order” (Exhibit A);

9 (d) the Court and its personnel;

10 (e) court reporters, their staffs, and professional vendors to whom
11 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to
12 Be Bound by Protective Order” (Exhibit A);

13 (f) during their depositions, witnesses in the action to whom disclosure
14 is reasonably necessary and who have signed the “Agreement to Be Bound by Protective
15 Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that
16 reveal Protected Material must be separately bound by the court reporter and may not be
17 disclosed to anyone except as permitted under this Stipulated Protective Order.

18 (g) the author of the document or the original source of the information,

19 (h) any prior recipient of the document or Protected Material.

20 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
21 **IN OTHER LITIGATION.**

22 If a Receiving Party is served with a subpoena or an order issued in other litigation that
23 would compel disclosure of any information or items designated in this action as
24 “CONFIDENTIAL” the Receiving Party must so notify the Designating Party, in writing (by
25 fax, if possible) promptly and in no event more than three court days after receiving the
26 subpoena or order. Such notification must include a copy of the subpoena or court order.

27 The Receiving Party also must promptly inform in writing the Party who caused the
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1 subpoena or order to issue in the other litigation that some or all the material covered by the
2 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party
3 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other
4 action that caused the subpoena or order to issue.

5 The purpose of imposing these duties is to alert the interested parties to the existence of
6 this Protective Order and to afford the Designating Party in this case an opportunity to try to
7 protect its confidentiality interests in the court from which the subpoena or order issued.
8 The Designating Party shall bear the burdens and the expenses of seeking protection in that
9 court of its confidential material—and nothing in these provisions should be construed as
10 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
11 from another court.

12 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

13 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
14 Protected Material to any person or in any circumstance not authorized under this Stipulated
15 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
16 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the
17 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
18 made of all the terms of this Order, and (d) request such person or persons to execute the
19 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

20 **10. FILING PROTECTED MATERIAL.** Without written permission from the
21 Designating Party or a court order secured after appropriate notice to all interested persons, a
22 Party may not file in the public record in this action any Protected Material. A Party that
23 seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. To
24 the extent that Protected Material is admitted at trial without the benefit of sealing, the
25 parties shall not gratuitously advise any third person that the material is available in the
26 public record.

1 **11. FINAL DISPOSITION.** Unless otherwise ordered or agreed in writing by the
2 Producing Party, within sixty days after the final termination of this action, each Receiving
3 Party must return all Protected Material to the Producing Party. As used in this subdivision,
4 “all Protected Material” includes all copies, abstracts, compilations, summaries or any other
5 form of reproducing or capturing any of the Protected Material. With permission in writing
6 from the Designating Party, the Receiving Party may destroy some or all of the Protected
7 Material instead of returning it. Whether the Protected Material is returned or destroyed, the
8 Receiving Party must submit a written certification to the Producing Party (and, if not the
9 same person or entity, to the Designating Party) by the sixty day deadline that identifies (by
10 category, where appropriate) all the Protected Material that was returned or destroyed and
11 that affirms that the Receiving Party has not retained any copies, abstracts, compilations,
12 summaries or other forms of reproducing or capturing any of the Protected Material.
13 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
14 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work
15 product, even if such materials contain Protected Material. Any such archival copies that
16 contain or constitute Protected Material remain subject to this Protective Order as set forth in
17 Section 4 (DURATION), above.

18 **12. MISCELLANEOUS**

19 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any
20 person to seek its modification by the Court in the future.

21 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this
22 Protective Order no Party waives any right it otherwise would have to object to disclosing or
23 producing any information or item on any ground not addressed in this Stipulated Protective
24 Order. Similarly, no Party waives any right to object on any ground to use in evidence of
25 any of the material covered by this Protective Order.

26 **12.3 Right to Use Own Protected Material.** This Order shall not operate in
27 any way to limit a party’s use of its own Protected Material for any purpose outside this
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1 litigation (although of course disclosure of such material outside this litigation in a manner
2 inconsistent with the protections afforded the material hereunder may be grounds for
3 challenging its protected status).

4 **12.4 Right to Use Independently Obtained Material.** Nothing in this Order
5 shall restrict the use of documents or information that is either already in the possession of
6 the Receiving Party, lawfully obtained from another source, or independently developed by
7 the undersigned counsel or experts retained or consulted by the parties hereto without the use
8 of Protected Material.

9 **12.5 Right to Execute in Counterparts.** This Stipulation may be executed in
10 two or more counterparts, each of which shall be deemed an original, but all of which shall
11 constitute one and the same instrument.

12 **12.6 No Contractual Liability.** To the extent that the parties have agreed on
13 the terms of this Order, such Stipulation is for the Court's consideration and approval as an
14 Order. The parties' Stipulation shall not be construed to create a contract between the
15 parties, counsel, or between the parties and their respective counsel.

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17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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3 June 2, 2006.

HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
A Professional Corporation

4
5 By: _____/s/
6 DIRK M. SCHENKKAN

7 Attorneys for Plaintiff HOWARD RICE
8 NEMEROVSKI CANADY FALK & RABKIN, A
9 Professional Corporation

10 June ____, 2006.

WOOD, HERRON & EVANS LLP

11 By: _____
12 THOMAS HUMPHREY

13 Attorneys for Defendant TOTAL TECHNOLOGY,
14 INC.

15 PURSUANT TO STIPULATION, IT IS SO ORDERED. **BUT SEE L.R. 79-5.**

16 June 12, 2006.

/S/ CLAUDIA WILKEN

17 _____
18 CLAUDIA WILKEN

19 United States District Judge
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HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned acknowledges having received and read the attached Stipulated Protective Order and agrees to be bound by it.

Date: _____

City and State where signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN

A Professional Corporation